IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 26647 of 2007(V)

AGAINST THE ORDER IN EP. 177 /2000 IN
OS.958/1995 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER: JUDGEMENT DEBTOR

SUBBAYAN P.C., S/O.CHAMU PANDARAM,
MALLANKOLUMBU, VANDITHAVALAM VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT: DECREE HOLDER

THE CATHOLIC SYRIAN BANK LTD.,
THATHAMANGALAM BRANCH,
REPRESENTED BY ITS MANAGER.

BY ADV.SRI.B.S.KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C).NO.26647 OF 2007-V

Dated this the 6th day of September, 2007.

JUDGMENT

This writ petition is preferred for a direction to the Subordinate Judge, Palakkad, to dispose of E.A.No.523/2007 and not to effect the sale till such disposal is made. The decree holder is a bank. The property sought to be sold in auction, according to the writ petitioner, is 2 acres and 29 cents of land with a rice mill. It is submitted that the property will at least fetch a minimum amount of Rs.Ten lakhs and as the decree amount due is less than Rs. 2.5 lakhs, it may not be necessary to sell the entire property and therefore, the court below has committed an error by directing sale of the entire property, that too for inadequate consideration. The learned counsel highlights that Ext.P1 objection was never considered by the court below while ordering the sale. The Apex Court as well as this Court on innumerable number of decisions had reiterated the necessity of application of mind by the court when ordering sale of immovable property and it has been held that when the decree debt can be satisfied by selling a portion of the property, that should be resorted to, and only if the decree amount is not

satisfied, to proceed with further sale of the property. Since it is submitted that the court below has not considered Ext.P1 objection and that as it has not disposed of Exts.P4 application, I direct the court below not to proceed with the sale proposed to be held today.

2. Therefore, the writ petition is allowed and the sale posted for today is directed to be deferred and the court below is directed to consider Ext.P4 application in accordance with law after hearing both sides and thereafter proceed with the matter in accordance with law. In the meanwhile, the writ petitioner is directed to pay an amount of Rs.50,000/= within a period of one month and, if he is really earnest in making the entire payment on instalment basis, he may move an application to that effect before the court below and if consented to by the decree holder, the court shall pass orders accordingly. If the amount is not paid, the sale can be proceeded.

M.N. KRISHNAN, JUDGE.

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